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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAN FRANCISCO BAYKEEPER, a non-profit
corporation,

Plaintiff,

v.

GRANITE ROCK COMPANY, a California
corporation,

Defendant.

Civil No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES

(Federal Water Pollution Control Act, 33
U.S.C. § 1251 *et seq.*)

1 Plaintiff San Francisco Baykeeper ("Baykeeper"), by and through its counsel, alleges as
2 follows:

3 **INTRODUCTION**

4 1. This is a citizen suit, brought pursuant to section 505(a)(1) of the Federal Water
5 Pollution Control Act (the "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(1), to address
6 violations of the CWA by Defendant Granite Rock Company ("Granite Rock" or "Defendant") arising
7 out of operations at its concrete batch plant, commonly known as Granite Rock Co. Peninsula
8 Concrete, located in Redwood City, California. Since November 23, 2010, Granite Rock has been
9 discharging and continues to discharge polluted stormwater from the facility, located at 355 Blomquist
10 Street in Redwood City, California (the "Facility") in violation of the express terms and conditions of
11 Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342. Since November 23, 2010,
12 Defendant has also violated the General Industrial Stormwater Permit issued by the State of
13 California, NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water
14 Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and Order
15 No. 2014-0057-DWQ ("2015 Permit") (collectively, the "Industrial Stormwater Permit"). Baykeeper
16 seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of
17 costs, including attorney and expert witness fees, for Granite Rock's repeated and ongoing violations
18 of the Clean Water Act.

19 **JURISDICTION AND VENUE**

20 2. This Court has subject matter jurisdiction over the parties and subject matter of this
21 action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331 (an action
22 arising under the laws of the United States), and 28 U.S.C. § 2201 (declaratory relief).

23 3. On November 23, 2015, Baykeeper provided notice of intent to file suit against Granite
24 Rock for Granite Rock's CWA violations ("Notice Letter") to the Administrator of the United States
25 Environmental Protection Agency ("EPA"); the Regional Administrator of EPA Region IX; the
26 Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer
27 of the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board")
28

1 (collectively, "state and federal agencies"), and Granite Rock, as required by the CWA, 33 U.S.C. §
2 1365(b)(1)(A). A copy of the Notice Letter is attached as Exhibit 1.

3 4. More than sixty (60) days have passed since the Notice Letter was mailed to Granite
4 Rock and the state and federal agencies. Neither EPA nor the State of California has commenced or is
5 diligently prosecuting a court action to redress the violations alleged in this complaint. No claim in
6 this action is barred by any prior administrative action pursuant to section 309(g) of the CWA, 33
7 U.S.C. § 1319(g).

8 5. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of
9 the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial
10 district.

11 **INTRADISTRICT ASSIGNMENT**

12 6. Intradistrict assignment of this matter to the Oakland Division of the Court is
13 appropriate pursuant to Civil Local Rule 3-2(d). The events or omissions which give rise to
14 Baykeeper's claims occurred in San Mateo County, which is under the jurisdiction of the Oakland
15 Division of the Northern District of California.

16 **PARTIES**

17 7. Plaintiff Baykeeper is a non-profit public benefit corporation organized under the laws
18 of the State of California with its main office in Oakland, California. Baykeeper's 5,000 members live
19 and/or recreate in and around the San Francisco Bay area. Baykeeper is dedicated to protecting the
20 water quality of San Francisco Bay for the benefit of its ecosystems and communities. To further
21 these goals, Baykeeper actively seeks federal and state agency implementation of the CWA, and,
22 where necessary, directly initiates enforcement actions on behalf of itself and its members.

23 8. Members of Baykeeper, including citizens, taxpayers, property owners, and residents,
24 live, work, and travel near, and recreate in, San Francisco Bay and its tributaries, into which Granite
25 Rock discharges pollutants. Baykeeper members use and enjoy San Francisco Bay and its tributaries
26 for recreational, educational, scientific, conservation, aesthetic, spiritual, and other purposes. Granite
27 Rock's discharges of stormwater containing pollutants impair each of these uses. Thus, the interests of
28

1 Baykeeper's members have been, are being, and will continue to be adversely affected by Granite
2 Rock's failure to comply with the CWA and the Industrial Stormwater Permit.

3 9. The November 23, 1992 "Notice of Intent" for the Facility to comply with the terms of
4 the 1997 Permit, the June 9, 2015 "Notice of Intent" for the Facility to comply with the terms of the
5 2015 Permit, and each annual report filed for the Facility since 2010 pursuant to the Industrial
6 Stormwater Permit, named "Granite Rock Company" as the owner and/or operator. The California
7 Secretary of State's online business portal lists Granite Rock Company as an active California
8 corporation, located at P.O. Box 50001, Watsonville, California 95077. Plaintiff is therefore informed
9 and believes and thereon alleges that Granite Rock owns and operates the Facility.

10 **REGULATORY BACKGROUND**

11 **The Problem of Stormwater Pollution**

12 10. Stormwater runoff is one of the most significant sources of water pollution in the nation
13 and has been recognized as a leading cause of significant and cumulative harmful impacts to the water
14 quality of San Francisco Bay. With every rainfall event, hundreds of millions of gallons of polluted
15 rainwater flow from local industrial facilities, such as the Facility, and pour into storm drains, local
16 tributaries, and the Bay. The consensus among state and federal agencies and water quality specialists
17 is that stormwater pollution accounts for more than half of the total heavy metal pollution entering the
18 San Francisco Bay watershed each year.

19 11. Stormwater runoff from industrial sites such as the Facility causes harm to humans and
20 aquatic life. In particular, stormwater can contain heavy metal pollutants such as aluminum,
21 chromium, copper, iron, lead, mercury, nickel, tin, and zinc, as well as high concentrations of
22 suspended solids, and nitrate and nitrite. Exposure and ingestion of heavy metals can cause health
23 problems in people and aquatic animals, including neurological, physiological, and reproductive
24 effects. Heavy metals have been shown to alter activity in tissues and blood of fish.

25 12. High concentrations of total suspended solids ("TSS") degrade optical water quality by
26 reducing water clarity and decreasing light available to support photosynthesis. TSS have been shown
27 to alter predator-prey relationships (for example, turbid water might make it difficult for fish to see
28 their prey). Deposited solids alter habitat for fish, aquatic plants, and benthic organisms. TSS can also

1 be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic
2 hydrocarbons ("PAHs"), are adsorbed onto TSS. Thus, higher concentrations of TSS mean higher
3 concentrations of toxins associated with those sediments. Inorganic sediments, including settleable
4 matter and suspended solids, have been shown to negatively impact species richness, diversity, and
5 total biomass of filter feeding aquatic organisms on bottom surfaces.

6 **The Clean Water Act**

7 13. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into
8 waters of the United States unless the discharge is in compliance with various enumerated CWA
9 sections. Among other things, CWA section 301(a) prohibits discharges not authorized by, or in
10 violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued
11 pursuant to CWA section 402, 33 U.S.C. § 1342.

12 14. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer its own
13 EPA-approved permit program for discharges. In California, the State Board and its nine Regional
14 Boards have approval from EPA to administer an NPDES permit program for the State. The State
15 Board and Regional Boards issue individual and general NPDES permits regulating water pollutant
16 discharges from various categories of dischargers.

17 15. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for
18 stormwater discharges "associated with industrial activity."

19 16. CWA section 301(b) requires that, by March 31, 1989, all point source dischargers,
20 including those discharging polluted stormwater, must achieve technology-based effluent limitations
21 by utilizing the Best Available Technology Economically Achievable ("BAT") for toxic and
22 nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for
23 conventional pollutants. *See* 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

24 17. CWA section 505(a)(1) provides for citizen enforcement actions against any "person,"
25 including individuals, corporations, or partnerships, for violations of NPDES permit requirements and
26 for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1); *see* 33 U.S.C. § 1362(5).

27 18. CWA section 505(a) authorizes a citizen suit action for injunctive relief. 33 U.S.C. §
28 1365(a).

19. CWA violators are subject to an assessment of civil penalties of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. §§ 19.1-19.4.

State Regulations

20. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water Quality Standards, including water quality objectives and beneficial uses for navigable waters of the United States. The CWA prohibits discharges from causing or contributing to a violation of such state Water Quality Standards. *See* 33 U.S.C. § 1311(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

21. The State of California regulates water quality through the State Board and nine Regional Boards, and each Regional Board maintains a separate Water Quality Control Plan which contains Water Quality Standards for water bodies within its geographic area.

22. The San Francisco Bay Regional Water Quality Control Board has adopted the “San Francisco Bay Basin (Region 2) Water Quality Control Plan” (“Basin Plan”), as amended by Resolution No. R2-2010-0100, setting forth the Water Quality Standards and beneficial uses for San Francisco Bay and its tributaries.

23. The Basin Plan sets forth, among other things, narrative Water Quality Standards for floating material, oil and grease, sediment, settleable matter, and suspended materials, and sets forth numeric Water Quality Standards for pH, arsenic, cadmium, chromium VI, copper, cyanide, lead, mercury, nickel, selenium, silver, tributyltin, zinc, and PAHs. *See* Basin Plan §§ 3.3.6, 3.3.7, 3.3.9, 3.3.12-3.3.14, 3.3.21, and Table 3-3. The Basin Plan also includes site specific objectives (“SSOs”), which are Water Quality Standards for specific sites, for certain pollutants of concern, including copper and nickel. *See* Basin Plan Table 3-3A.

24. In addition, EPA has promulgated Water Quality Standards for toxic priority pollutants in all California water bodies (the “California Toxics Rule” or “CTR”), which apply to San Francisco Bay and its tributaries, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682 (May 18, 2000); 40 C.F.R. § 131.38.

The Industrial Stormwater Permit

25. In California, the State Board has elected to issue a single, statewide general permit applicable to all stormwater discharges associated with industrial activity. On April 17, 1997, the State Board adopted the 1997 Permit, which was in effect through June 30, 2015. On July 1, 2015, the 2015 Permit became effective and superseded the 1997 Permit, except for enforcement purposes.

26. To discharge stormwater lawfully in California, industrial dischargers (i.e., facility operators) must secure coverage under the Industrial Stormwater Permit by filing a notice of intent and comply with its terms, or obtain and comply with an individual NPDES permit. 1997 Permit, p. II, VII; 2015 Permit, Section I(A) (Findings 8, 12), Attachment C (defining “discharger”).

27. The Industrial Stormwater Permit is an NPDES permit issued pursuant to CWA section 402(p), 33 U.S.C. § 1342(p). Violations of the Industrial Stormwater Permit are also violations of the CWA. 1997 Permit, Section C(1); 2015 Permit, Section XXI(A).

28. The Industrial Stormwater Permit contains certain absolute prohibitions. The Industrial Stormwater Permit prohibits the direct or indirect discharge of materials other than stormwater (“non-stormwater discharges”), which are not otherwise authorized by an NPDES permit, to the waters of the United States. 1997 Permit, Order Part A(1); 2015 Permit, Section III(B). The Industrial Stormwater Permit prohibits stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance (1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C)) and discharges that adversely impact human health or the environment (1997 Permit, Order Part C(1); 2015 Permit, Section VI(B)). Finally, the Industrial Stormwater Permit prohibits discharges that cause or contribute to an exceedance of any applicable Water Quality Standard contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. 1997 Permit, Order Part C(2); 2015 Permit, Section VI(A).

29. Under the CWA and the Industrial Stormwater Permit, dischargers must employ Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate stormwater pollution. 33 U.S.C. § 1311(b); 1997 Permit, Order Part B(3); 2015 Permit, Section X(H). EPA has developed benchmark levels (“Benchmarks”) that are objective guidelines to evaluate whether a permittee’s BMPs achieve compliance with the BAT/BCT standards. Final National Pollutant

1 Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial
 2 Activities ("Multi-Sector Permit"), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector Permit,
 3 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-67
 4 (Oct. 30, 2000).

5 30. The 2015 Permit includes Numeric Action Limits ("NALs") that are based on EPA's
 6 Benchmarks. 2015 Permit, Section I(M) (Finding 62). Like Benchmarks, the NALs indicate "the
 7 overall pollutant control performance at any given facility." *Id.* at Section I(M) (Finding 61).

8 31. Dischargers must develop and implement a Storm Water Pollution Prevention Plan
 9 ("SWPPP") at the time industrial activities begin. 1997 Permit, Section A(1)(a) and Order Part E(2);
 10 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must identify and evaluate sources of
 11 pollutants associated with industrial activities that may affect the quality of stormwater and authorized
 12 non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G).
 13 The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants
 14 associated with industrial activities in stormwater and authorized non-stormwater discharges. 1997
 15 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that achieve
 16 pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Part B(3); 2015
 17 Permit, Sections I(D) (Finding 32), V(A).

18 32. The SWPPP must include: a narrative description and summary of all industrial
 19 activity, potential sources of pollutants, and potential pollutants; a site map indicating the stormwater
 20 conveyance system, associated points of discharge, direction of flow, areas of actual and potential
 21 pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and
 22 pollutant control measures; a description of stormwater management practices; a description of the
 23 BMPs to be implemented to reduce or prevent pollutants in stormwater discharges and authorized non-
 24 stormwater discharges; the identification and elimination of non-stormwater discharges; the location
 25 where significant materials are being shipped, stored, received, and handled, as well as the typical
 26 quantities of such materials and the frequency with which they are handled; a description of dust and
 27 particulate-generating activities; and a description of individuals and their current responsibilities for
 28 developing and implementing the SWPPP. 1997 Permit, Sections A(1)-(10); 2015 Permit, Section X.

1 33. The Industrial Stormwater Permit also requires facility operators to properly operate
2 and maintain any facilities and systems of treatment and control installed or used to achieve
3 compliance with the conditions of the Industrial Stormwater Permit and requirements of the SWPPP at
4 all times. 1997 Permit, Section C(5); 2015 Permit, Section XXI(F).

5 34. The SWPPP and site maps must be assessed annually and revised as necessary to
6 ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4); 2015 Permit, Sections I(J)
7 (Finding 55), X(B)(1).

8 35. The 1997 Permit required facility operators to develop and implement a monitoring and
9 reporting program ("MRP") when industrial activities begin at a facility. 1997 Permit, Section B(1)-
10 (2) and Order Part E(3). The MRP must have ensured that stormwater discharges were in compliance
11 with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in
12 the 1997 Permit. *Id.* at Section B(2) and B(10). The MRP must have ensured that practices at the
13 facility to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges were
14 evaluated and revised to meet changing conditions at the facility, including revision of the SWPPP.
15 *Id.*

16 36. The 2015 Permit requires facility operators to monitor and sample stormwater
17 discharges to ensure that the facility is complying with the terms of the permit. 2015 Permit, Sections
18 I(J) (Findings 55-56); XI.

19 37. Pursuant to the monitoring and reporting requirements of the Industrial Stormwater
20 Permit, facility operators must conduct ongoing visual observations of stormwater and non-stormwater
21 discharges and record responsive measures taken to eliminate unauthorized non-stormwater discharges
22 and to reduce or prevent pollutants in stormwater and authorized non-stormwater discharges. 1997
23 Permit, Sections B(3)-(4); 2015 Permit, Section XI(A). Facility operators must collect samples of
24 stormwater discharges from all locations where stormwater may be discharged from the facility. 1997
25 Permit, Sections B(5), (7); 2015 Permit, Section XI(B)(4)-(5). Through the 2014-2015 reporting
26 period, facility operators were required to analyze stormwater samples for pH, total suspended solids,
27 total organic carbon (or oil and grease as a substitute), specific conductance, toxic chemicals, and
28 other pollutants which are likely to be present in significant quantities in stormwater discharging from

1 the facility. 1997 Permit, Section B(5). Additionally, the Industrial Stormwater Permit requires
2 operators of facilities that fall under Standard Industrial Classification (“SIC”) Code 327X to analyze
3 stormwater samples for iron. 1997 Permit, Table D; 2015 Permit, Table 1.

4 **STATEMENT OF FACTS**

5 **Facility Background**

6 38. Granite Rock operates the Facility located at 355 Blomquist Street, Redwood City,
7 California 94063.

8 39. The Facility is regulated by the Industrial Stormwater Permit.

9 40. Granite Rock submitted a Notice of Intent to comply with the 1997 Permit to the State
10 Board on or around November 23, 1992.

11 41. Granite Rock submitted a Notice of Intent to comply with the 2015 Permit to the State
12 Board on or around June 9, 2015.

13 42. Operations at the Facility generally include, but are not limited to, manufacturing
14 ready-mix concrete, maintaining vehicles, and fueling. The Facility is categorized under SIC Code
15 3273, ready-mixed concrete. Facilities that fall under SIC Code 3273 are required to analyze
16 stormwater samples for iron.

17 43. Some operations at the Facility occur outdoors and are causing pollutants to be exposed
18 to rainfall.

19 44. The types of pollutants that the Facility releases into the immediate environment are
20 known to include, or have the potential to include, among other contaminants: sediment (total
21 suspended solids or “TSS”), iron, pH, Portland cement, aggregates, sand, truck cleaner, color
22 additives, concrete aggregate, concrete admixtures, oil and grease, antifreeze, diesel fuel, battery acid,
23 waste oil, used oil filters, used engine coolant, and other pollutants.

24 45. The industrial materials stored and the pollutants generated at the Facility are exposed
25 to stormwater flows.

26 46. Activities at the Facility generate significant debris and particulate matter, which
27 contain pollutants and settle on surfaces within the Facility. During rain events, this pollution washes
28 off of those surfaces and into stormwater discharge points, which flow to San Francisco Bay.

Activities Contributing to CWA Violations

47. Granite Rock has not developed and/or implemented an adequate SWPPP at the Facility.

48. Granite Rock has not developed and/or implemented BMPs that adequately minimize the exposure of pollutants to stormwater at the Facility.

49. Granite Rock has not developed and/or implemented BMPs at the Facility that adequately control and minimize polluted runoff from the Facility.

50. Granite Rock has not developed and/or implemented BMPs at the Facility that adequately treat and remove pollutants in stormwater prior to discharge.

51. Granite Rock has not developed and/or implemented adequate measures to reduce or eliminate stormwater pollution that constitute BAT/BCT.

52. Granite Rock has not developed and/or implemented adequate BMPs at the Facility to achieve stormwater discharges that meet EPA Benchmarks, NALs, and/or applicable Water Quality Standards.

53. Granite Rock has not adequately evaluated and revised the Facility's SWPPP to address these failures.

54. Granite Rock has failed to properly operate and maintain the structures and systems that have been put in place at the Facility to achieve compliance with the Industrial Stormwater Permit and its SWPPP requirements.

55. Granite Rock has not developed and/or implemented an adequate monitoring and reporting program at the Facility.

56. Granite Rock's monitoring and reporting activities have not resulted in practices that adequately reduce or prevent pollutants from discharging from the stormwater flows from the Facility.

57. Granite Rock's monitoring activities have not effectively identified compliance problems at the Facility or resulted in effective revisions of the SWPPP.

58. Due to Granite Rock's lack of effective pollution prevention measures, including effective BMPs, and their failure to implement an effective monitoring and reporting program, stormwater from the Facility becomes polluted with many constituents. The potential pollutants

1 include: iron, pH, Portland cement, aggregates, sand, truck cleaner, color additives, concrete
2 aggregate, concrete admixtures, oil and grease, antifreeze, diesel fuel, battery acid, and other
3 pollutants. Pollutants become entrained in stormwater when such water flows over and across the
4 outdoor areas of the Facility.

5 59. Polluted stormwater is discharged from the Facility into San Francisco Bay, via
6 Redwood City's municipal storm drain system, which discharges to Steinberger Creek and/or
7 Redwood Creek, and eventually to San Francisco Bay. San Francisco Bay and its tributaries are
8 waters of the United States.

9 60. Granite Rock's annual stormwater sampling results indicate that the Facility's
10 discharges of stormwater are consistently contaminated with higher levels of pollutants than are
11 permissible under the Industrial Stormwater Permit.

12 61. Granite Rock's annual stormwater sampling results indicate that the Facility's
13 discharges of stormwater are regularly contaminated with higher levels of pollutants than are
14 consistent with BMPs that constitute BAT/BCT.

15 62. Granite Rock's repeated stormwater exceedances of EPA Benchmarks over the past
16 five years for pollutants, including TSS, pH, and iron, indicate that Granite Rock has failed and
17 continues to fail to meet BAT/BCT.

18 CLAIMS

19 FIRST CLAIM FOR RELIEF

20 **Discharges in Violation of Permit Prohibitions of the Industrial Stormwater Permit**

21 **(Violations of 33 U.S.C. §§ 1311, 1342)**

22 63. Plaintiff incorporates the allegations contained in all other paragraphs as though fully
23 set forth herein.

24 64. The Industrial Stormwater Permit requires that stormwater discharges and authorized
25 non-stormwater discharges shall not cause or threaten to cause pollution, contamination, or nuisance.
26 *See* 1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C). Receiving Water Limitations
27 of the Industrial Stormwater Permit require that stormwater discharges and authorized non-stormwater
28 discharges shall not adversely impact human health or the environment. *See* 1997 Permit, Order Part

1 C(1); 2015 Permit, Section VI(B). Finally, the Industrial Stormwater Permit prohibits discharges that
2 cause or contribute to a violation of any water quality standard contained in a Statewide Water Quality
3 Control Plan or the applicable Regional Board's Basin Plan. 1997 Permit, Order Part C(2); 2015
4 Permit, Section VI(A).

5 65. Since at least November 23, 2010, Granite Rock has been discharging polluted
6 stormwater from the Facility in violation of the prohibitions of the Industrial Stormwater Permit
7 during every significant rain event (defined by EPA as a rainfall event generating 0.1 inches or more
8 of rain). *See* Exhibit 1, Notice Letter at Attachment 2.

9 66. The polluted stormwater discharged from the Facility during every significant rain
10 event contains pollutants harmful to fish, plants, birds, and human health that have adversely affected,
11 and continue to adversely affect, human health and the environment in violation of Receiving Water
12 Limitation C(1) of the 1997 Permit and Section VI(B) of the 2015 Permit.

13 67. Discharges of polluted stormwater from the Facility have in the past caused, and will
14 continue to cause, pollution, contamination, and/or nuisance to the waters of the United States in
15 violation of Discharge Prohibition A(2) of the 1997 Permit, and Sections III(C) and VI(C) of the 2015
16 Permit.

17 68. Discharges of polluted stormwater from the Facility have in the past caused, and will
18 continue to cause or contribute to violations of the Water Quality Standards set forth in the Basin Plan
19 in violation of Order Part C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

20 69. Each day since at least November 23, 2010 that Granite Rock has discharged polluted
21 stormwater from the Facility in violation of the Industrial Stormwater Permit is a separate and distinct
22 violation of CWA section 301(a), 33 U.S.C. § 1311(a).

23 70. By committing the acts and omissions alleged above, Granite Rock is subject to an
24 assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and
25 1365.

26 71. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §
27 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
28 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at

1 law.

2 72. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
3 controversy exists as to the rights and other legal relations of the Parties.

4 **SECOND CLAIM FOR RELIEF**

5 **Discharge in Violation of Effluent Limitations of the Industrial Stormwater Permit**
6 **(Violations of 33 U.S.C. §§ 1311, 1342)**

7 73. Plaintiff incorporates the allegations contained in all other paragraphs as though fully
8 set forth herein.

9 74. The Industrial Stormwater Permit's SWPPP requirements and effluent limitations
10 require dischargers to reduce or prevent pollutants in their stormwater discharges through the
11 implementation of measures that must achieve BAT for toxic and nonconventional pollutants and BCT
12 for conventional pollutants.

13 75. Granite Rock has discharged and continues to discharge stormwater from the Facility
14 containing levels of pollutants that do not achieve compliance with the BAT/BCT requirements during
15 every significant rain event occurring from November 23, 2010 through the present. Granite Rock's
16 failure to develop and/or implement BMPs adequate to achieve the pollutant discharge reductions
17 attainable via BAT or BCT at the Facility is a violation of the Industrial Stormwater Permit and the
18 CWA. *See* 1997 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding 32), V(A); 33 U.S.C. §
19 1311(b).

20 76. Each day since at least November 23, 2010 that Granite Rock has discharged
21 stormwater containing pollutants in violation of the Industrial Stormwater Permit, specifically Effluent
22 Limitation B(3) of the 1997 Permit, is a separate and distinct violation of section 301(a) of the CWA,
23 33 U.S.C. § 1311(a).

24 77. Granite Rock's CWA violations described in the paragraphs above will continue in the
25 future, as violations of Sections I(D) and V(A) of the 2015 Permit, until Granite Rock develops and
26 implements BMPs at the Facility adequate to achieve pollutant discharge reductions attainable via
27 BAT and BCT.

28 78. By committing the acts and omissions alleged above, Granite Rock is subject to an

1 assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d)
2 and 1365.

3 79. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §
4 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
5 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at
6 law.

7 80. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
8 controversy exists as to the rights and other legal relations of the Parties.

9 **THIRD CLAIM FOR RELIEF**

10 **Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan,**
11 **in Violation of the Industrial Stormwater Permit**
12 **(Violations of 33 U.S.C. §§ 1311, 1342)**

13 81. Plaintiff incorporates the allegations contained in all other paragraphs as though fully
14 set forth herein.

15 82. The Industrial Stormwater Permit requires dischargers of stormwater associated with
16 industrial activity to develop and implement an adequate SWPPP when they commence industrial
17 activity. 1997 Permit, Section A(1); 2015 Permit, Section X(B).

18 83. Granite Rock, as of November 23, 2010, has commenced industrial activity and
19 continues to conduct industrial activity at the Facility.

20 84. Granite Rock has failed and continues to fail to develop and implement an adequate
21 SWPPP or implement all necessary revisions to the SWPPP for the Facility as required by the
22 Industrial Stormwater Permit.

23 85. Granite Rock has failed and continues to fail to develop or implement a SWPPP for the
24 Facility that includes BMPs adequate to meet the requirements of the Industrial Stormwater Permit,
25 specifically, Section A of the 1997 Permit and Section X of the 2015 Permit.

26 86. Granite Rock has failed and continues to fail to adequately develop or implement a
27 SWPPP at the Facility that prevents discharges from violating the Discharge Prohibitions, Effluent
28 Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit.

87. Each day since November 23, 2010 that Granite Rock has failed to adequately develop and/or implement a SWPPP for the Facility in violation of the Industrial Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

88. Granite Rock has been in violation of the Industrial Stormwater Permit's SWPPP requirements every day since November 23, 2010. Granite Rock will continue to be in violation of the SWPPP requirements each day that Granite Rock fails to develop and fully implement an adequate SWPPP for the Facility.

89. By committing the acts and omissions alleged above, Granite Rock is subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

90. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

91. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

FOURTH CLAIM FOR RELIEF

Unpermitted Discharge of Pollutants in Violation of CWA Section 301(a)

(Violations of 33 U.S.C. § 1311)

92. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

93. Granite Rock has discharged and continues to discharge pollutants from the Facility absent compliance with the Industrial Stormwater Permit. Thus, Granite Rock's discharges constitute an unpermitted discharge of pollutants from the Facility to waters of the United States in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

94. Granite Rock has been in violation of CWA section 301(a) every day it has discharged stormwater from the Facility to waters of the United States since November 23, 2010. Granite Rock will continue to be in violation of the CWA each day that it has unpermitted stormwater discharges

1 from the Facility to waters of the United States.

2 95. By committing the acts and omissions alleged above, Granite Rock is subject to an
3 assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d)
4 and 1365.

5 96. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §
6 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm
7 Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at
8 law.

9 97. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual
10 controversy exists as to the rights and other legal relations of the Parties.

11 **RELIEF REQUESTED**

12 Baykeeper respectfully requests this Court to grant the following relief:

13 1. Declare Granite Rock to have violated and to be in violation of sections 301(a) and (b)
14 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for discharging pollutants from the Facility in
15 violation of a permit issued pursuant to section 402(p) of the CWA, 33 U.S.C. § 1342(p), for failing to
16 meet effluent limitations which include the Best Available Technology Economically Achievable and
17 Best Conventional Pollutant Control Technology requirements, and for failing to comply with the
18 substantive and procedural requirements of the Industrial Stormwater Permit;

19 2. Enjoin Granite Rock from discharging pollutants from the Facility to stormwater
20 discharge points, which discharge to San Francisco Bay;

21 3. Order Granite Rock to restore all receiving waters damaged by Granite Rock's illegal
22 discharges of pollutants from the Facility;

23 4. Enjoin Granite Rock from violating sections 301(a) and (b) and section 402(p) of the
24 Clean Water Act and from violating the substantive and procedural requirements of the Industrial
25 Stormwater Permit at the Facility;

26 5. Order Granite Rock to pay civil penalties of up to \$37,500 per day for all violations
27 occurring after January 12, 2009 in accordance with CWA section 309(d), 33 U.S.C. § 1319(d) and 40
28 C.F.R. §§ 19.1-19.4;

1 6. Award Plaintiff its costs (including reasonable attorney, witness, and consultant fees) as
2 authorized by the CWA section 505(d), 33 U.S.C. § 1365(d);

3 7. Award such other relief as this Court may deem appropriate.
4

5 Dated: March 3, 2016

Respectfully Submitted,

6
7 /s/ Nicole C. Sasaki

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Nicole C. Sasaki
Attorneys for Plaintiff

Exhibit 1



SAN FRANCISCO
BAYKEEPER.

November 23, 2015

*VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED*

Granite Rock Company Peninsula Concrete
Attention: John Seith, Branch Manager
355 Blomquist Street
Redwood City, California 94063

Agent for Service of Process for
Granite Rock Company
Kevin Jeffery
350 Technology Drive
Watsonville, California 95076

Granite Rock Company
Attention: Tom Squeri, President & CEO
P.O. Box 50001
Watsonville, California 95077

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Sirs:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against Granite Rock Company ("Granite Rock") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Granite Rock Peninsula Concrete, located at 355 Blomquist Street in Redwood City, California (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by Granite Rock's operations.

This letter addresses Granite Rock's unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by



Pollution hotline: 1 800 KEEB BAY
www.baykeeper.org

1736 Franklin Street, Suite 80C
Oakland, CA 94612
(510) 735-9700

Order No. 2014-0057-DWQ (“2015 Permit”) (collectively, the “Industrial Stormwater Permit”).¹

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Granite Rock of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against the City under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Granite Rock contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Granite Rock operates a concrete batch plant located at 355 Blomquist Street in Redwood City, California (the “Facility”). At the Facility, Granite Rock manufactures ready-mix concrete, which is loaded into mixer trucks for use off site. Granite Rock also operates a roofed truck shop and on-site diesel fueling station. Potential pollutants from the Facility include pH, total suspended solids (“TSS”), heavy metals, Portland cement, flyash, aggregate (sand/gravel), chemical admixtures, liquid additives, oil and grease, diesel, hydraulic oil, lubricants, solvents, antifreeze, brake fluid, transmission fluid, welding material, polycyclic aromatic hydrocarbons (“PAHs”), and other pollutants. The Facility is adjacent to Redwood Creek, and is located just south of the Bair Island Ecological Reserve and portions of the Don Edwards National Wildlife Refuge in Redwood City. Stormwater from the Facility discharges to the municipal storm drains adjacent to the driveways on Blomquist Street, and ultimately drains to San Francisco Bay.

B. The Affected Water

San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific

¹ On April 1, 2014, the State Water Resources Control Board adopted 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).

“beneficial uses.” The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

II. THE FACILITY’S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

On or around November 23, 1992, Granite Rock submitted a Notice of Intent (“NOI”) to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit. On or around June 9, 2015, Granite Rock submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants² and best conventional pollutant control technology (“BCT”) for conventional pollutants.³ 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Attachment I to this letter.⁴ The 2015 Permit incorporates these Benchmark values as “Numeric Action Levels.” 2015 Permit, Section I.M. (Finding 62).

² BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

³ BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

⁴ The Benchmark values are part of EPA’s Multi-Sector General Permit (“MSGP”) and can be found at: <http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm>. The most recent sector-specific Benchmarks can be found at:

Granite Rock's self-reported exceedances of Benchmark values over the last five (5) years, identified in Attachment 2 to this letter, indicate that Granite Rock has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies Granite Rock that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for TSS, pH, and iron.

Granite Rock's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that Granite Rock has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

Granite Rock's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Granite Rock discharges stormwater without meeting BAT/BCT. Baykeeper alleges that Granite Rock has discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years.⁵ Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. Granite Rock is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A.2.; 2015 Permit, Sections III.C., VI.C. The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. 1997 Permit, Order Part C.1.; 2015 Permit, Section VI.B. Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). 1997 Permit, Order Part C.2.; 2015 Permit, Section VI.A. Applicable WQS are set forth in the California Toxics Rule ("CTR")⁶ and Chapter

http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf ("2015 MSGP"). SIC Code 3273 is covered under Sector E in the 2015 MSGP.

⁵ Significant local rain events are reflected in the rain gauge data available at:

<http://www.ncdc.noaa.gov/cdo-web/search>.

⁶ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

3 of the San Francisco Bay Basin (Region 2) Water Quality Control Plan (“Basin Plan”).⁷ See Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Table 3-3, identifies specific marine water quality objectives for toxic pollutants.⁸

Baykeeper alleges that Granite Rock’s stormwater discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan. These allegations are based on Granite Rock’s self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board. The sampling results indicate that the City’s discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. For example, Granite Rock’s sampling results indicate exceedances of numeric WQS for pH. See Attachment 2.

Baykeeper alleges that each day that Granite Rock has discharged stormwater from the Facility, Granite Rock’s stormwater has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in San

⁷ The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.

⁸ Basin Plan, Table 3-3 is available at: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf.

Francisco Bay. Baykeeper alleges that Granite Rock has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA. Granite Rock is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the last five (5) years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1-A.10.; 2015 Permit, Section X. Moreover, the Industrial Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to "ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in [the 2015 Permit]."). Additionally, the Industrial Stormwater Permit requires that Granite Rock assess its stormwater sampling data and identify any additional parameters, beyond those explicitly required, that indicate the presence of pollutants in industrial stormwater. *See* 1997 Permit, Section Section B.5.c.ii.; 2015 Permit, Section X.G.2.d.

Based on information available to Baykeeper, Granite Rock has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, Granite Rock's past and/or current SWPPP has not/does not include and/or Granite Rock has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

Accordingly, Granite Rock has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements

of the Industrial Stormwater Permit, and Granite Rock will continue to be in violation every day until it develops and implements an adequate SWPPP. Granite Rock is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

D. Failure to Properly Sample and Report Stormwater Discharges

Granite Rock is also in violation of the Industrial Stormwater Permit because it has been collecting stormwater samples that do not adequately reflect pollution coming from its industrial activities. Section B.7.a. of the 1997 Permit required Granite Rock to “collect samples of stormwater discharges from all drainage areas that represent the quality and quantity of the facility’s storm water discharges.” Section B.5.c.ii. of the 1997 Permit required facilities to sample for “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B.5.c.iii. of the 1997 Permit and Section XI.B.6. of the 2015 Permit require facilities to sample for specific analytical parameters based on their standard industrial classification (“SIC”) Code. Facilities that fall into SIC Code 327X, concrete, gypsum, plaster products, are required to analyze their stormwater discharges for iron. Granite Rock self-classified the Facility under SIC Code 3273, ready-mixed concrete, but has failed to consistently test its samples for iron and thus has failed to comply with Sections B.5.c. and B.7.a. of the 1997 Permit and Section XI.B.6. of the 2015 Permit.

Furthermore, the Industrial Stormwater Permit requires a minimum number of sampling events per wet season, with limited exceptions. 1997 Permit, Section B.5; 2015 Permit, Section XI.B.2. Yet Granite Rock has failed to consistently sample and analyze at least two stormwater discharges from the Facility during the past five (5) years. Granite Rock reported the following sampling events: one storm event during the 2010-2011 wet season, zero storm events during the 2011-2012 wet season, and one storm event during the 2013-2014 wet season.

As a result of Granite Rock’s failure to properly sample and report stormwater discharges from its Facility, Granite Rock has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Granite Rock will continue to be in violation of the sampling requirements each day that Granite Rock fails to adequately develop and/or implement an effective sampling program at the Facility. Granite Rock is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Granite Rock sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater

Permit “must be either eliminated or permitted by a separate NPDES permit.” 1997 Permit, Order Part A.1.; *see also* 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28).

Because Granite Rock has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Granite Rock Company is the person responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Nicole C. Sasaki, Associate Attorney
George Torgun, Managing Attorney
San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

Nicole C. Sasaki: (510) 735-9700 x110, nicole@baykeeper.org
George Torgun: (510) 735-9700 x105, george@baykeeper.org

VII. REMEDIES

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Granite Rock for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against

Granite Rock in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,



Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper

Cc:

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Jared Blumenfeld, Regional Administrator
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce Wolfe, Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

**Attachment 1: EPA Benchmarks and
Water Quality Standards for Discharges to Saltwater**

**A. EPA Benchmarks, 2000 and 2015
Multi-Sector General Permit (“MSGP”)**

Parameter	Units	Benchmark value	Source
pH	SU	6.0 – 9.0	2015 MSGP
Total Suspended Solids	mg/L	100	2015 MSGP
Oil and Grease	mg/L	15	2000 MSGP
Iron Total	mg/L	1.0	2015 MSGP

B. Water Quality Standards (Basin Plan)

Parameter	Units	WQS value	Source
pH	SU	6.5 – 8.5	Basin Plan

**Attachment 2: Table of Exceedances for
Granite Rock Company Peninsula Concrete**

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Location	Sample Date	Parameter	Result	Unit
2010-2011	East Gate	2/17/2011	Iron Total	5.4	mg/L
2010-2011	West Gate	2/17/2011	Iron Total	2.6	mg/L
2010-2011	East Gate	2/17/2011	pH	8.62	SU
2010-2011	West Gate	2/17/2011	pH	8.93	SU
2012-2013	East Gate	11/16/2012	Iron Total	21	mg/L
2012-2013	West Gate	11/16/2012	Iron Total	3.6	mg/L
2012-2013	East Gate	11/16/2012	pH	9.19	SU
2012-2013	West Gate	11/16/2012	pH	10.3	SU
2012-2013	East Gate	11/16/2012	Total Suspended Solids	420	mg/L
2012-2013	West Gate	11/16/2012	Total Suspended Solids	350	mg/L
2012-2013	East Gate	11/28/2012	pH	8.91	SU
2012-2013	West Gate	11/28/2012	pH	10.5	SU
2012-2013	East Gate	11/28/2012	Total Suspended Solids	160	mg/L
2012-2013	West Gate	11/28/2012	Total Suspended Solids	1700	mg/L
2013-2014	West Gate	2/26/2014	pH	9.53	SU
2013-2014	West Gate	2/26/2014	Total Suspended Solids	610	mg/L
2014-2015	East Gate	12/11/2014	Iron Total	14	mg/L
2014-2015	West Gate	12/11/2014	Iron Total	36	mg/L
2014-2015	East Gate	12/11/2014	pH	8.57	SU
2014-2015	West Gate	12/11/2014	pH	9.7	SU
2014-2015	East Gate	12/11/2014	Total Suspended Solids	550	mg/L
2014-2015	West Gate	12/11/2014	Total Suspended Solids	1500	mg/L
2014-2015	East Gate	2/6/2015	Iron Total	4.6	mg/L
2014-2015	West Gate	2/6/2015	Iron Total	20	mg/L
2014-2015	East Gate	2/6/2015	pH	9.37	SU
2014-2015	West Gate	2/6/2015	pH	9.76	SU
2014-2015	East Gate	2/6/2015	Total Suspended Solids	110	mg/L
2014-2015	West Gate	2/6/2015	Total Suspended Solids	240	mg/L

**Attachment 3: Alleged Dates of Exceedances by
Granite Rock Company Peninsula Concrete,
December 27, 2010 to November 23, 2015**

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; Redwood City, California station, GHCND:US1CASM0008* when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2010	2011	2012	2013	2014	2015
12/29	1/2	1/21	1/6	2/3	2/7
	1/30*	1/23	1/24	2/6	2/8
	1/31*	2/14	2/8	2/8	2/9
	2/16	2/29	2/20	2/9	4/7
	2/17*	3/13	3/6	2/10	4/8
	2/18*	3/14	3/8	2/27	4/25
	2/19*	3/15	3/31	2/28	6/11
	2/20*	3/17	4/1	3/1	11/2
	2/25	3/25	4/4	3/6	11/3
	3/6	3/28	9/22	3/27	11/10
	3/14*	4/1	11/20	3/30	11/15
	3/16	4/11	11/21	4/1	
	3/19	4/12	12/7	4/2	
	3/20	4/13		4/4	
	3/22	4/26		4/26	
	3/23	6/5		9/25	
	3/24	10/22		10/25	
	3/25	10/23		11/1	
	3/26	10/24		11/13	
	3/27	11/1		11/21	
	4/7	11/9		12/1	
	4/14	11/17		12/2	
	5/15	11/18		12/3	
	6/1*	11/21		12/4	
	6/2*	11/29		12/6	
	6/4	11/30		12/11	
	6/29	12/1		12/12	
	10/4	12/2		12/13	
	10/5	12/3		12/15	
	10/6	12/13		12/16	
	11/4	12/16		12/17	
	11/6	12/22*		12/18	
	11/12	12/23*		12/20	
	11/20	12/24*		12/25	
		12/26*			
		12/27*			
		12/29			

* Data reported by Foster City, California station, GHCND:US1CASM0006.